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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Written statement submitted by Lawyers Committee for Human Rights a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[9 February 1994]

Human Rights and interim Palestinian self-government

1. New arrangements stemming from the Declaration of Principles (DOP) agreed between the Palestine Libration Organization (PLO) and the State of Israel on 13 September 1993 offer the potential for enhancing respect for fundamental human rights in the territories. The extent to which human rights protection are an integral part of the process will be a vital factor in determining whether these new arrangements will form the basis for lasting peace in the area.

2. Mutual fear and abuses of human rights are linked in a destructive cycle. By offering an alternative to the absolute denial of the political aspirations of the other party, the DOP provides a framework that can remove basic fears about national survival from both Israelis and Palestinians, thus potentially overcoming a root cause of insecurity and human rights violations. Measures which enhance protection from human rights abuse also diminish the cycle of violations and reprisals.

3. As negotiations between Israel and the PLO have dragged on, and deadlines for the beginning of Israeli withdrawal from Jericho and the Gaza Strip have come and gone without any movement, violations of human rights have continued at a high level within the occupied territories. For example, the Gaza Centre for Rights and Law, the Gaza Strip affiliate of the International Commission of Jurists, reported on 5 January 1994 that in Gaza since 13 September 1993, 30 Palestinians had been killed by the Israeli army or their agents, many of them in circumstances which either amounted to extrajudicial execution or in situations where the threat posed to the security forces could not justify resort to lethal force. Lethal attacks by Palestinians on Israeli military personnel and civilians within the occupied territories have also been numerous, contributing to a cycle of violence fuelled on both sides by political forces anxious to derail the process set in motion by the signing of the DOP.

4. This deterioration in the human rights situation and the sense of insecurity on both sides has had a detrimental effect on public confidence in the peace process. In order for the Israeli Government and the PLO leadership to enjoy the consent of a majority of the people they seek to represent at the negotiating table, it is vital that both Israelis and Palestinians do not feel that their human rights are endangered or violated by the very process designed to bring about a secure future.

5. It is particularly important that steps now be taken to stabilize the human rights situation as the Israelis and Palestinians move towards an "interim period" when a Palestinian authority with limited powers will govern a yet to be defined, but presumably expanding, portion of the occupied territories of the West Bank and Gaza Strip, beginning with Gaza and Jericho. It is equally important for measures to be implemented to improve the human rights situation during the present "pre-interim period".

6. The development and strengthening of legal institutions capable of protecting human rights and fostering a sense of security require the resolution of several complicated and contentious issues. Progress in this area is further impeded by general uncertainty about the political future of the territories, including when the transfer of authority will take place and the extent of the legislative authority of the Palestinian authorities.

7. A number of technical issues will need to be addressed, such as harmonizing legislation, training the judiciary and creating a functional court system. But a more fundamental root problem must be dealt with first: this is the perception of the courts as agents of a legal regime essentially unfavourable to Palestinian interests. The extent of the legislative authority of the Palestinian entity remains subject to negotiation. However, the more circumscribed Palestinian legal autonomy proves to be, the more the structural independence of the Palestinian judiciary will be undermined. The Palestinian judiciary must have the capacity to uphold the rule of law in the territories. Human rights protection will be best served by the creation of a strong independent Palestinian judicial authority with clear powers over all individuals and institutions within autonomous Palestinian territory.

8. Statements by the PLO leadership committing it to full respect for international human rights norms are welcome. However, these statements must be reinforced by the creation of strong independent institutions which will be able to hold the governing authority accountable for its actions.

9. The formation of a unified, independent, self-governing lawyers association is crucial to ensuring that the Palestinian judicial system gains the respect and trust of the people. The Palestinian legal profession must quickly assume self-regulatory responsibilities, as well as playing a role in public education and human rights promotion within Palestinian society.

10. The West Bank and Gaza Strip are fortunate in having a number of well-established independent human rights organizations. These organizations need to be protected and strengthened in the interim period so that they are in a position to expose violations of human rights perpetrated by the new Palestinian authority, as well as continuing with their vital work of monitoring violations by the Israeli authorities.

11. The creation of an independent watchdog body with extensive legally established powers of oversight over the Palestinian authority, as envisaged in the establishment of the Palestinian Independent Commission for Human Rights (PICHR), promises to be an important safeguard. The PICHR's effectiveness will depend to a large extent on the ability of this body to act, and to be seen to act, independently of the Palestinian authority.

12. The DOP does not alter the status of the West Bank and Gaza Strip under international law. Israel remains the occupying Power and will continue to bear primary responsibility throughout the interim period for the protection of the inhabitants of the territories as set forth in the Fourth Geneva Convention. While Israel has never recognized the applicability of the Fourth Geneva Convention to the territories, it has stated that it abides by its humanitarian principles.

13. Many Palestinian human rights activists see the Fourth Geneva Convention as providing the legal basis to trigger international intervention in the territories to uphold the protection set forth in the Convention if Israel persists in practices which violate them. Other Palestinian human rights activists support a direct role in human rights protection for the international community, acting through the United Nations, during the interim period.

14. There is some concern that the Palestinian authority in the territories may develop an authoritarian character. To guard against this risk, Palestinian human rights activists are campaigning for the creation of accountable and transparent systems of government. International aid should be channelled in such a way that promotes respect for human rights in the occupied territories. Likewise, international aid to Israel should also be linked to its abiding by international human rights norms in the territories.

15. A number of human rights issues remain unresolved and problematic in negotiations between Israel and the PLO, among them: the release of political prisoners and the concern that decisions about prisoner release not be used to reward and punish various Palestinian factions; proliferation of weapons,

particularly in the Gaza Strip; conflicts of jurisdiction between Palestinitan courts and the Israeli system; and the issue of collaborators. The issue of Palestinians suspected of collaborating with Israeli authorities promises to be a major challenge for the Palestinian justice system. It will face a dual task of assigning responsibility in cases where individuals have been wrongfully punished or killed for alleged collaboration, as well as for bringing to justice suspected collaborators within the community.

16. There is a clear potential role for the international community in ensuring respect for fundamental human rights norms in the territories. Israeli officials generally oppose international intervention in Israel/PLO negotiations, arguing that this runs counter to the building of mutual trust and cooperation through cooperative work to resolve issues and problems. Palestinian officials, recognizing their relative weakness, are more favourable to international involvement to protect their rights.

17. The Israeli Government has already expressed reservations about the deployment of international human rights monitors in the territories under the auspices of the United Nations. However, the presence of such monitors, supported by the political willingness on both sides to prevent the recurrence of violations, would offer a way to sharply reduce the cycle of violence. For their presence to be effective, the impartiality of United Nations monitors would have to be demonstrable.

18. The contentious issues outlined above, and many others not referred to here, will not be resolved quickly. If the international community stands back and allows violence and human rights abuses to continue concurrently with negotiations, the trust necessary for successful negotiations will be eroded. Preventing human rights abuses and reducing violence would greatly enhance the prospects for the negotiation of a just and lasting peace which would best protect the human rights of all inhabitants of the territories.

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